



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

INTERNATIONAL
SECURITY AFFAIRS

16 September 1978

Honorable Benjamin A. Gilman
House of Representatives
Washington, D. C. 20515

Dear Mr. Gilman:

This is in reply to your letter to Secretary Brown regarding the status review of Lieutenant Commander Nick Brooks, USN, MIA.

I have been advised by the Assistant Secretary of the Navy that although his schedule did not allow a meeting at the time requested, he regrets that you have interpreted his decision to dispatch Admiral Seiberlich and Captain Colgan to meet with you as an action unresponsive to a Member of Congress. As was explained to your staff, involvement of Assistant Secretary Hidalgo in this matter prior to conduct of the hearing would have compromised his ability to perform his duties as a reviewing authority and advisor to the Secretary of the Navy, who ultimately renders the final decisions in these cases. The unfettered ability of the civilian Secretariat to fulfill their functions is a safeguard in the interests of all parties involved and one which must be carefully protected.

Your request for a separate hearing for a review of status change from MIA to POW has been denied because it would serve no useful purpose either for the family of Mr. Brooks or for the Secretary of Defense; any evidence or argument to support the contention that LCDR Brooks is or was a POW may be presented at the scheduled hearing and will be fully and carefully considered by the Status Review Board.

The files of all government agencies dealing with casualty information pertaining to LCDR Brooks have been thoroughly searched and all information resulting from those searches has been made available to Mr. Brooks, with the exception of information withheld for national security reasons. All pertinent information, including that withheld from Mr. Brooks will be available to the Status Review Board for the examination prior to making a decision in the case. All such information has been identified and compiled for this purpose.



Of the twelve remaining Navy MIA cases, there were five men lost before Commander Brooks. The status reviews in all five cases are being delayed because of pending Freedom of Information Act requests. In the case of LCDR Brooks all FOIA requests have been completed, hence there is no longer any reason to delay the review of his case.

I regret that we cannot grant your request for a delay in the status review of LCDR Nick Brooks. In the interest of uniformity, fairness and equity to all next of kin of missing Americans, it is essential that we not deviate from our established policies and uniform procedures. Any impression of insensitivity on the part of this Department to the concerns of the Brooks family is unfortunate and unintended. As you know, a notice of hearing in this case was sent to Mr. George Brooks only after we had responded fully to his Freedom of Information Act request insofar as it pertained to LCDR Brooks' casualty status. The first notice gave Mr. Brooks 21 days in which to respond to the description of his right to a status review. He failed to return his hearing rights form and agree to a hearing date. A second notice allowing another 21 days for Mr. Brooks to express his intentions regarding a status review hearing again met with his failure to return his hearing rights form and agreement to a hearing date. At this point the rules of procedure permitted this Department to treat Mr. Brooks' silence as a waiver of his right to a hearing. Because of your expression of interest, however, we have not exercised this right, but instead scheduled the hearing for tomorrow morning at 9:00 A.M.

We believe that we have been as responsive to the Brooks family in our handling of this case as circumstances permit.

Sincerely,

Walter Slocombe
Principal Deputy

BENJAMIN A. GILMAN
27th DISTRICT, NEW YORK

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USMA BOARD OF VISITORS

September 27, 1978

The Honorable Harold Brown
Secretary of Defense
The Pentagon
Washington, D.C.

Dear Secretary Brown:

I am writing to you about the proposed presumption of death hearing in the Nicholas Brooks case. After having met with several Navy personnel, and after having been refused an appointment with Assistant Secretary of the Navy, Edward Hildago, in the matter of the Nick Brooks case, I have been informed that the case of Nicholas Brooks, listed as missing in action since January 2, 1970 is scheduled for review on September 29; despite entreaties from myself, the Brooks family, and other Members of Congress, to delay this proceeding.

My request for a reasonable delay is based upon the following:

1. A prior request for a review of status change from M.I.A. to P.O.W. which should be considered separate, apart and before any presumption of death hearing. An application for a change of status from M.I.A. to P.O.W. should have been forthcoming years ago, but was not, and should not be determined simultaneously with a presumption of death designation.
2. I have requested an opportunity to make certain that all intelligence information which we have gathered is contained in Brooks's file at the time of a review hearing. Some of this information is still being sought and gathered together.
3. I have requested an explanation of why the Brooks case has been taken out of order. I have been informed that there are several cases much older than the Nick Brooks case, and that the Brooks case was moved up, not respecting the chronological order rule that has governed other reviews.

What disturbs me most is the insensitivity of the Defense Department in these status review cases. Each Naval officer I spoke with informed me that he understood the anguish that

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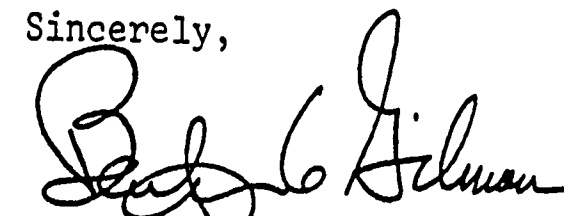
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the Brooks family was enduring, and yet, the maxim repeated over and again by Naval personnel was that these review cases were "unfinished business" which must be cleared up. The Brooks case is unique in several ways, but none of the Navy reviewing officers is willing to admit that there are certain inconsistencies which merit special attention.

Mr. Secretary, this entire experience has been a nightmare for the Brooks family. It has caused disillusionment about the procedure and workings of your Department. When a Member of Congress is refused access to an Assistant Secretary of the Navy, and is told that a "flag officer" will come down to speak with us, I cannot believe that there is an understanding of the impact of a presumption of death hearing, nor a caring about the emotions and concerns of the family involved. We have received only lip service in this matter, shallow pathos and an attitude of "business before honor."

Thank you for your concern, and I await your response.

Sincerely,



BENJAMIN A. GILMAN
Member of Congress

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